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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

LISAMARIA MARTINEZ,

Plaintiff,

v.

**COUNTY OF ALAMEDA, MELISSA
WILK, in her individual capacity, EVA HE,
in her individual capacity, MARIA LAURA
BRIONES, in her individual capacity,**

Defendants.

Case No. 3:20-cv-06570-TSH

**JOINT OBJECTIONS TO THE COURT'S
PROPOSED VERDICT FORM**

JOINT OBJECTIONS TO THE COURT’S PROPOSED VERDICT FORM

Pursuant to the Court’s Proposed Verdict Form filed on February 28, 2024 (ECF No. 123), the parties hereby submit their objections, comments or suggestions concerning the proposed verdict form, and responses to the other side’s objections, comments or suggestions.

DEFENDANT’S OBJECTIONS

Defendant objects to the following provisions:

Question 2

The instruction following Question 2 should reflect that if the answer is no, the jury should skip question 3, because if there is no finding that the County acted with deliberate indifference, then Plaintiff would not be entitled to any monetary damages. *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1138-39 (9th Cir. 2001), *as amended on denial of reh’g* (Oct. 11, 2001) (“To recover monetary damages under Title II of the ADA ... plaintiff must prove intentional discrimination on the part of the defendant” and holding that “the deliberate indifference standard applies” for purposes of establishing such intentional discrimination).

Response from Plaintiff

Defendant is only partially correct. A finding for a federal damages remedy is the only claim that requires deliberate indifference. Under the California Disabled Persons Act (DPA), any violation of the ADA, whether intentional or not, triggers a DPA violation and damages remedy. The parties have a legal dispute over whether the DPA applies to public entities because that organization falls under California’s statutory definition of a “person.” The parties have more fully set out briefing on this issue under the objections and responses to objections to the Court’s proposed Final Instruction No. 13 regarding the DPA.

Regardless, allowing this jury to answer this question avoids potential future inefficiencies and costs with minimal impact on the present deliberations. If the jury finds ADA liability and no deliberate indifference, one side or the other is likely to file an appeal based on either a damages award or no damages award. To avoid a need to retry this damages claim after an appeal outcome, the parties should have the jury answer the damages question now in this trial. The

1 appeal can then either confirm or invalidate that damages award without a need to retry the case
2 in a second proceeding.

3 **Question 4**

4 Defendant objects to this question, as well as to the state law claims being submitted to the
5 jury as they are redundant and duplicative of her claim under the ADA. As each of those claims
6 seek the exact same relief based on the exact same legal theory, the redundant state law claims
7 should be dismissed as duplicative. See *M.M. v. Lafayette Sch. Dist.*, 681 F.3d 1082, 1091 (9th Cir.
8 2012) (“It is well established that a district court has broad discretion to control its own docket,
9 and that includes the power to dismiss duplicative claims.”). Further, providing questions in the
10 verdict form on such claims is not only redundant, but would give the impression to the jury that
11 the Court is emphasizing those matters, thereby causing undue influence and juror confusion.
12 Thus, Question 4 should be eliminated.

13 **Response from Plaintiff**

14 These so-called “redundant and duplicative” claims should not be dismissed. Defendant
15 provides no citation to, nor is Plaintiff aware of, any precedent that indicates that a plaintiff
16 cannot simultaneously proceed with similar claims under state and federal law in the *same*
17 action. Defendant’s use of *M.M. v. Lafayette Sch. Dist.*, 681 F.3d 1082 (9th Cir. 2012) is unavailing
18 as it involves the dismissal of claims “stated in identical terms” in *separate* actions as part of a
19 single order responding to two *separate* motions to dismiss involving the same parties. *Id.* at
20 1091. That is simply not the situation here.

21 Even when the elements to be proven are substantially similar because state law allows for a
22 claim to be established if the federal ADA is violated, state law provides remedies that can vary
23 from federal remedies, as well as different and independent support and calculations for those
24 remedies. Additionally, Government Code 11135 requires an extra element of proof regarding the
25 alleged state funding or financial assistance.

26 Finally, suddenly asking for the dismissal of claims on the eve of trial after multiple
27 opportunities to brief the issue on summary judgment is prejudicial to Plaintiff.
28

Question 5

Defendant objects to the wording of this question, as it impermissibly suggests that the County “violated its legal obligations.” The question should be rephrased, as follows: “If you found that the County violated Plaintiff’s rights under the Americans with Disabilities Act on March 29, 2019, did Plaintiff prove by a preponderance of the evidence that there is a likelihood that in the future, Defendant’s Clerk Recorder’s Office will violate its legal obligations described in Final Instructions Nos. 9 and 10 with respect to individuals with a disability of blindness or visual impairment?”

Response from Plaintiff

The jury needs to understand that their assessment of the “future” violations is based on the same sort of violation found previously. There needs to be a link between the past violation and the potential future violation. “Again” tends to do this work in an efficient manner. When coupled with the disclaimer, there is no prejudice.

Plaintiff is amenable to alternative phrases that Court may select, such as “a future violation that is the same as the violation that you previously found” or “continue to violate the ADA in the same way that you found,” but is concerned about any changes that would create additional confusion or that would sever this link between past and potential future violations.

Respectfully submitted,

DATED: March 7, 2024

TRE LEGAL PRACTICE

/s/ Timothy Elder

Timothy Elder
Attorneys for Plaintiff

DATED: March 7, 2024

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/s/ Nicholas D. Fine

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